IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 574 OF 2001

The State of Maharashtra ..Appellants

versus

1. Geeta Savalaram Godkar
2. D. A. Sokholkar ..Respondents

Mr. S. N. Gawade, AGP for the Appellants - State.

Mr. A. S. Khandeparkar for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 10TH MARCH, 2005

ORAL ORDER :

1. Heard learned AGP for the Appellants - State. Mr. Khandeparkar for the Respondents.

2. The State has filed this Appeal challenging the order of the Reference Court enhancing compensation granted to the claimant under the Land Acquisition Act.

3. About 20 hectares 20.5 R of land from different survey numbers situate at Village Aravali, Tak. Taluka Vengurla, District Sindhudurg of the

respondents was acquired for development of tourism. The notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was dated 22.2.1991. Referee passed an award on 30.3.1993 fixing compensation at Rs.1.25 per R for the land under cultivation and Rs.2/- per R for Potkharaba land. Out of the acquired land 11 H and 86 R of land was potkharaba land.

4. Being aggrieved by inadequate compensation awarded, the claimants filed Reference under Section 18 of the Act and claimed Rs.3,000/- per R. The Reference Court awarded Rs.1,875 per R. Hence the State has filed this Appeal because according to them the enhancement is more than 15 times of the compensation awarded by SLAO of Kudal.

5. The learned AGP contended that during the period from 1986-90 there were only six sale transaction of the lands of Village Aravali Tak and of Village Mochemad and those sale instances were considered by the SLAO or the Referee. The claimants relied upon certain sale instances of 1992 i.e. subsequent to the notification under Section 4 and the Reference Court wrongly held that if the sale instances prior to the notification were not available then the sale instances of the subsequent period could be considered. This approach according

to the learned AGP is totally wrong.

6. Secondly, AGP contended that claimants relied upon certified copies of Index II in respect of Exhibits 41 to 44. But did not examine either the vendor or the vendee of those sale instances and neither produced on record copies of the sale deeds. According to him, no material therefore was made available to the Reference Court to compare nature and type of the land, its fertility and utility with the acquired land and the subject matter of the aforesaid sale deeds.

7. Thirdly, the finding of the court that for determining the amount of compensation of land under cultivation and Potkharaba lands could be considered as a single piece of land and not separately, is totally and completely wrong particularly when more than half of the acquired land is Potkharaba. Therefore, in any case the court was not justified in awarding compensation at Rs.1875/- for Potkharaba land which was admeasuring 11 H 86 R. The learned AGP conceded that compensation at Rs.2/- per R for the Potkharaba land i.e. Rs.200/- per hectare may be inadequate. Lastly, the learned AGP contended that absolutely no reasons have been given by the court as to how it came to the conclusion that Rs.1875/- was the proper compensation for the

acquired land.

8. As against this, Mr. Khandeparkar counsel for the claimants contended that this land was acquired for tourism purposes, that it was 20 kms. away from Vengurla Municipality and 10 kms. away from Goa Maharashtra Border, that the facilities of irrigation were available to the land for throughout the year and therefore lands were fertiled, that Aravali is situate at 7 kms. from Village Reddi, where there are mines and manufacturing unit of Usha Ispat is established at Reddi, he therefore contended that Rs.1875/- was a proper compensation.

9. The submission of the learned AGP that distinction between cultivated land and Potkharaba land should have been made, is required to be accepted because more than half of the acquired land i.e. out of 20 H and 20.5 R of acquired land , 11 H 86 R of the land is Potkharaba land. There is no dispute in that regard by the claimants. Therefore the Reference Court committed an error in awarding compensation at Rs.1,875/- per R in respect of the acquired land and that order has to be modified. Potkharaba land cannot be equated with cultivable land at all.

10. So far as compensation of Rs.1875/- per R in respect of other land, the Reference Court relied

upon sale instances of 1992. This was done by the Reference Court on the basis of copies of Index II. In fact if at all the claimants wanted the court to rely upon those sale instances from Exhibits 41 to 44, then it was necessary for the claimants to examine either the Vendor or vendee or to produce sale deeds and then to show the similarities between the acquired land and the lands which were the subject matter of the aforesaid sale deeds. No attempt whatsoever was made by the claimants, they remained contented by producing certified copies.

11. On behalf of the claimants one Janardan Narayan Godkar, the Power of Attorney of the holder of the claimants Geeta was examined. He contended that there were cashewnut gardens in land Survey No. 31/5 and 34/4. There were about 75 cashewnut trees in those lands. They were 25 years old trees and he was getting a lucrative income from the said cashew nut trees. He also claimed compensation of about 15 Surang trees, 4 mango trees. 2 jambhul trees and 2 Cocum trees. i.e. total loss from income of different trees was Rs.30,000/- per annum. He also stated that the famous tourist place Terekohol was 10 kms. away from the acquired lands. He also contended that for the purpose of levy of stamp duty the Government had fixed the price of the lands at Village Tak at the rate of Rs.3000/- per R but he

was only claiming Rs.1,875/- per R. In his cross examination he admitted that he did not state before the Land Acquisition Officer that there were 75 cashew nut trees. He admitted that he has no receipts or documentary evidence to show about the sale of cashewnuts. Similarly about income from other trees he could not give documentary evidence. It is pertinent to note that in his solitary testimony there is no mention at all to the copies of the extract upon which the claimant was relying. There is no reference that those documents by this witness show any admission is made by him to show the similarities of the acquired land that the lands which were the subject matter of the sale deed on the record and proceedings of the court below. There is one Exhibit 41, which is a certified copy of the extract of the Index, but as rightly argued by learned AGP that the witness of the claimants does not show anything about those sale transactions, then neither the vendor or vendee is examined and when no certified copy of the sale instances in the list are not filed and when there is no evidence showing the similarities between the acquired land and the land which is subject matter of the sale deed, the court should not have required to relied upon those sale deeds.

12. Counsel for the claimants also contended

that looking to the fact that this acquired land was adjoining the sea, that it was near Usha Ispat and that it was near the tourist place, I do not find any force in this contention. Compensation has to be fixed on the basis of material made available by the claimants and when claimants did not care to produce certified copies of the sale instances and when no other evidence was adduced to prove the sale instances which were also subsequent to the notification under Section 91, there was no justification for claiming Rs.1,875/- per R.

13. I have already held that Potkharab land cannot be equated with the cultivable land, that grant of Rs.2/- per R for Potkharaba land is inadequate. Granting Rs.1,875/- per R for the entire acquired land was not at all justified. The Reference Court also did not consider that huge piece of land was acquired i.e. 20 H 20.5 R which is more than 15 acres, whereas the sale instances were for very small holdings.

14. The SLAO has awarded Rs.125/- for the cultivable land and Rs.2/- per R for Potkharaba land. In my opinion and looking to the circumstances, Rs.300/- per R would be proper compensation for the cultivable land and Rs.150/- per R would be proper for Potkharaba land, and

therefore this appeal is required to be allowed to that extent. Hence, the order :

ORDER :

. Appeal is partly allowed.

. Order granting compensation at Rs.1875/- per R for the entire acquired land is set aside.

. The Claimants will be entitled to compensation at Rs.300/- per R for cultivable land and Rs.150/- per R for Potkharaba land. Consequently other benefits will also come down proportionately. No order as to costs.

10.3.2005 (D. G. DESHPANDE, J.)